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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,204	09/18/2001	Richard Malcolm Kelso	P21154	6189
7055	7590	10/05/2007	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C.			SORKIN, DAVID L	
1950 ROLAND CLARKE PLACE				
RESTON, VA 20191			ART UNIT	PAPER NUMBER
			1723	
			NOTIFICATION DATE	DELIVERY MODE
			10/05/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/857,204	KELSO ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	David L. Sorkin	1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 August 2007.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 38-46, 56, 58 and 61-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 39-44 and 47-55 is/are allowed.
- 6) Claim(s) 38, 45, 46, 56, 58 and 61-69 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 38, 45, 46, 56, 58 and 61-69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. There is insufficient support in the originally filed application for the new limitation "said chamber being substantially free of fluid flow obstructions extending in a direction transverse to the jet fluid flow in a region between said second fluid inlet and said first fluid inlet", recited in claim 38. The issue of obstructions extending in a direction transverse to the jet fluid flow was not touched upon at all in the original filing. The absence of a positive disclosure is insufficient support for a negative limitation.

### ***Allowable Subject Matter***

3. Claims 39-44 and 47-55 are allowed.

### ***Response to Arguments***

4. The description requirement of section 112, first paragraph is the only issue remaining in the case. As applicant correctly points out, there is nothing impermissible about negative limitations in general; each situation must be considered on a case-by-case basis. Like any new matter issue, it must be decided if the new limitation introduces a new concept which did not appear in the original application as filed. *In re Anderson* 176 USPQ 331 (CCPA 1973). In the instant case, the concept of a

transverse obstruction in the recited location was not raised in the original application.

Applicant was not in possession of this concept until presented with a prior art reference, Patterson et al. (US 384,068), having such an obstruction. Introduction of the transverse obstruction concept is improper hindsight invention, using information obtained after filing as a blueprint. The fact pattern of the instant case is remarkably similar to that of *Ex parte Grasselli et al.* 231 USPQ 393 (BPAI 1983), where appellant, having been presented with prior art references disclosing a catalyst containing uranium, introduced a limitation "being free of uranium".

5. In *Purdue Pharma L. P. v. Faulding Inc.* 56 USPQ 1481 (CA FC 2000), which applicant cites, it was held that "one skilled in the art, reading the original disclosure, must 'immediately discern the limitation at issue' in the claims. *Waldemar Link GmbH & Co. v. Osteonics Corp.*, 32 F.3d 556, 558, 31 UPSQ2d 1855, 1857 (Fed. Cir. 1994)". In the instant case, no one reading the original disclosure would immediately discern that the presence or absence of a transverse obstruction at a particular location was at issue.

### ***Conclusion***

6. Effective on or about 01 October 2007, the art unit handling this application will be renumbered 1797.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 7:30-4:00 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 09/857,204  
Art Unit: 1723

Page 5



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS